

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6191

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Petitioner-Appellee,

v.

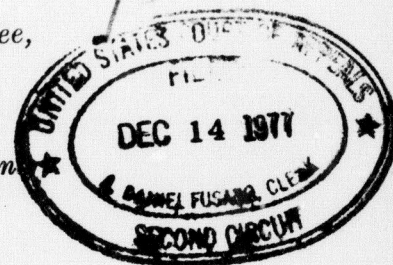
MORGAN GUARANTY TRUST COMPANY,

Respondent

and

ROGER L. KEECH and SANDRA J. KEECH,

Intervenors-Appellants.



On Appeal from the United States District Court for the
Southern District of New York

JOINT APPENDIX

BENDER & FRANKEL,
Attorneys for Intervenors-Appellants,
Roger L. Keech and Sandra J. Keech,
225 Broadway,
New York, New York 10007.
(212) 227-6000

ROBERT B. FISKE, JR.,
United States Attorney for the South-
ern District of New York,
Attorney for Petitioner-Appellee
United States of America,
One St. Andrew's Plaza,
New York, New York 10007.
(212) 791-1979

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

Date	Proceedings
10-13-77	USA -v- MORGAN GUARANTY TRUST CO.,--- Filed affdvt & show cause order why resp. should not be compelled to testify., ret. 10-25-77, Stewart, J.
10-13-77	USA -v- MORGAN GUARANTY TRUST CO.,--- Filed petitioner's memo of law.
10-21-77	USA -v- MORGAN GUARANTY TRUST CO.,--- Filed stip & order adjourning motion from 10-25-77 to 11-15-77, Gagliardi, J.
11-4-77	MORGAN GUARANTY TRUST CO.-v- ROGER L. KEECH ET ANO,---Filed affdvt of Sandor Frankel on behalf of intervenors in opposition to petition to enforce IRS summons.
11-4-77	MORGAN GUARANTY TRUST CO.-v- ROGER L. KEECH ET ANO,---Filed intervenors' memo of law
11-18-77	USA -v- MORGAN GUARANTY TRUST CO.---Filed supplemental affdt. of Alexander Dombroski.
11-18-77	USA -v- MORGAN GUARANTY TRUST CO.---Filed petitioner's reply memo of law.
11-21-77	USA -v- MORGAN GUARANTY TRUST CO. ETC.--- Filed order that intervenors' application is denied, resp. is to comply with IRS summons of 6-17-77, Carter, J.
11-21-77	USA -v- MORGAN GUARANTY TRUST CO. ETC.--- Filed notice of appeal of Roger L. Keech & Sandra J. Keech. Copies mailed.
12-7-77	USA -v- MORGAN GUARANTY TRUST CO.---Filed transcript of record of proceedings dated Carter, J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

-v-

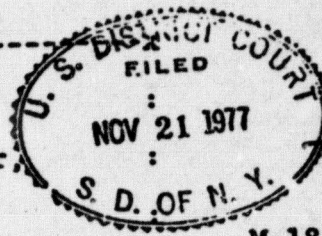
MORGAN GUARANTY TRUST CO.,

Respondent,

and

ROGER L. KEECH and SANDRA J. KEECH,

Intervenors.



M-18-304

ORDER

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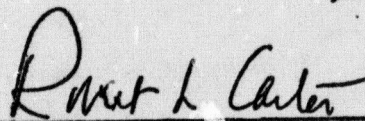
Petitioner having filed a petition, together with exhibits attached thereto, seeking enforcement of an Internal Revenue Service summons, and the United States District Court for the Southern District of New York having issued an order on October 6, 1977, directing respondent to appear before the United States District Court to show cause why the respondent should not be compelled to testify and produce the books, records and other papers demanded in the Internal Revenue Service summons served upon the respondent on June 17, 1977, and taxpayers Roger L. Keech and Sandra J. Keech having thereafter intervened and, in connection therewith, having filed affidavits, sworn to by Sandor Frankel, Esq. and William G. Wooldridge, opposing enforcement of the summons and requesting a hearing and discovery, and petitioner having filed supplementary affidavits sworn to by Special Agent Alexander Dombroski and Revenue Agent Charles Lazarus, and no papers having been filed by respondent, and argument having been heard at or about 11 a.m. on November 18, 1977

before the Honorable Robert L. Carter, United States District Judge, and petitioner having appeared at the hearing and requested enforcement of the IRS summons, and intervenors having appeared at the hearing in opposition to the petition and in support of their application for a hearing and discovery; now, upon all of the papers and proceedings herein, it is hereby

ORDERED that intervenors' application is denied and that respondent Morgan Guaranty Trust Co. shall comply fully with the Internal Revenue Service summons served upon the respondent on June 17, 1977 by appearing before Special Agent Alexander Dombroski or some other authorized officer of the Internal Revenue Service, at Room 204, 200 Sheffield Street, Mountainside, New Jersey at 10 a.m. on November 23, 1977, or at an adjourned time and date agreed to by Special Agent Dombroski, and to give all testimony and produce all books, records, papers and other data described in the summons.

Dated: New York, New York

November 18, 1977.



U. S. D. J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

Petitioner,

-v-

MORGAN GUARANTY TRUST COMPANY,

Respondent.

:
:
: ORDER TO
: SHOW CAUSE

----- x
NOTICE: THIS IS A COURT ORDER WHICH REQUIRES YOU TO APPEAR
IN PERSON IN ROOM 506, UNITED STATES COURTHOUSE,
FOLEY SQUARE, NEW YORK, NEW YORK 10007 AT 10:30
A.M. ON *October 25, 1977*

Upon the Petition, together with the exhibits
attached thereto, including the affidavit of Alexander
Dombroski of the Internal Revenue Service, and upon the
motion of the Honorable Robert B. Fiske, Jr., United States
Attorney for the Southern District of New York:

IT IS ORDERED that the respondent appear before the
District Court of the United States for the Southern District
of New York, Part I United States Courthouse, Foley Square,
New York, New York, in Room 506 on *October 25, 1977*
at 10:30 A.M., to show cause why the respondent should not
be compelled to testify and produce the books, records and
other papers demanded in the Internal Revenue Service
summons served upon the respondent on June 17, 1977 by IRS
Special Agent Alexander Dombroski;

IT IS FURTHER ORDERED that a copy of this order together with the Petition and the exhibits attached thereto be served upon the respondent by the United States Marshal, or, in the alternative, by Alexander Dombroski of the Internal Revenue Service on or before *October 14*; *1977*

and

IT IS FURTHER ORDERED that a copy of this order together with the Petition and exhibits attached thereto be sent to the taxpayers who are the subject of the instant Internal Revenue Service investigation by registered mail on or before *October 7, 1977*; and

IT IS FURTHER ORDERED that the respondent shall have five (5) days after service of said Petition within which a written response may be filed.

Dated: New York, New York

October 6 1977.

Charles H. Henshaw
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

-v-

MORGAN GUARANTY TRUST COMPANY,

Respondent.

PETITION TO ENFORCE
INTERNAL REVENUE
SERVICE SUMMONS

----- x

The United States of America, by its attorney,
Robert B. Fiske, Jr., United States Attorney for the
Southern District of New York, alleges on information and
belief as follows:

1. This is a proceeding brought under the
authority of Sections 7402(b) and 7604(a) of the Internal
Revenue Code of 1954 to judicially enforce an Internal
Revenue Service summons.

2. Alexander Dombroski is employed as an Special
Agent in the Office of the District Director of Internal
Revenue, Newark District, with a post of duty at 200
Sheffield Street, Mountainside, New Jersey.

3. The respondent is a banking organization
organized under the laws of the State of New York, with
principal offices at 23 Wall Street, New York, New York
within the jurisdiction of this Court.

4. Alexander Dombroski is conducting an investigation for the purpose of ascertaining the correctness of the tax returns filed by Sandra J. Keech and Roger L. Keech for the 1973, 1974 and 1975 tax years, as is more fully set out in Mr. Dombroski's affidavit sworn to September 22, 1977, which is annexed hereto as Exhibit A.

5. The respondent is in possession or control of books, records and other papers or has knowledge relating to the above-described investigation.

6. On June 17, 1977, an Internal Revenue Service summons, a copy of which is attached hereto as Exhibit B, was issued by Agent Dombroski with the approval of IRS Group Manager Gerald J. Lisnock directing the respondent to appear before Alexander Dombroski on July 5, 1977 at 10:00 A.M., at Room 204, 200 Sheffield Street, Mountainside, New Jersey, to testify and to produce for examination books, records and other papers, more fully described in the attached summons. A copy of this summons was served on the respondent at the direction of Alexander Dombroski on June 17, 1977 as is set out in the attached affidavit.

7. On June 17, 1977, Alexander Dombroski gave notice of the service of the summons upon respondent to Roger L. Keech and Sandra J. Keech by sending a copy of the

aforementioned notice together with a copy of the summons by certified or registered mail to the noticees at 529 Cherry Hill Lane, Kinnelon, New Jersey.

8. By letter dated June 28, 1977, a copy of which is attached hereto as Exhibit C, Roger L. Keech and Sandra J. Keech, by their attorney Stephen E. Lampf, directed respondent not to comply with the aforementioned summons. The respondent's failure to comply with the summons continues to date as is set forth in the attached Affidavit.

9. It is the practice of this Court to proceed by Order to Show Cause in these matters.

10. No previous application has been made for the order or relief sought herein.

WHEREFORE, the petitioner, the United States of America respectfully prays:

1. That this Court enter an order directing the respondent to show cause why the respondent should not comply with and obey the attached summons.

2. That this Court enter an order directing the respondent to obey the attached summons by ordering the appearance of the respondent to give testimony and to produce the books, records and other papers as is required and called for by the terms of the summons.

3. That this Court grant such other and further relief as it deems just and proper.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Petitioner

By: S/

GAINES GWATHMEY, III
Assistant United States Attorney
Office & Post Office Address:
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1979

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VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

GAINES GWATHMEY, III, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above entitled action; that he has read the foregoing Petition to Enforce Internal Revenue Summons and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters herein stated to be alleged on information and belief and that as to those matters he believes it to be true.

That the sources of deponent's information and the grounds of his belief are official records and files of the United States.

That the reason this verification is made by deponent and not by the United States of America is that the United States of America is a corporation sovereign.

Sworn to before me this

21 day of September, 1977.

GAINES GWATHMEY, III
Assistant United States Attorney

PAULINE P. TROMB
Notary Public, State of New York
No. 31-452381
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Petitioner, :

-v- : AFFIDAVIT

MORGAN GUARANTY TRUST COMPANY, :

Respondent. :

----- x

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

ALEXANDER DOMBROSKI, being first duly sworn,
deposes and says:

1. I am employed as an Special Agent in the
office of the District Director of Internal Revenue, Newark
District, New Jersey, with a post of duty at 200 Sheffield
Street, Mountainside, New Jersey.

2. In my capacity as an IRS Special Agent, I am
conducting an investigation for the purpose of ascertaining
the correctness of the tax returns filed by Sandra J. Keech
and Roger L. Keech for the tax years 1973, 1974 and 1975.

3. As a part of the above investigation, I issued
with the approval of Group Manager, Gerald J. Lisnock, an
Internal Revenue Service summons on June 17, 1977, directing
the respondent to appear before me on July 5, 1977, to testify

EXHIBIT A

and produce for examination the books, records and other papers described in the body of said summons; a copy of this summons is attached to the Petition as Exhibit B.

4. On June 17, 1977, I caused the Internal Revenue Service summons described in paragraph 3 above to be served on the respondent by directing IRS Special Agent Robert Senyak to deliver by hand an attested copy of said summons to respondent. Special Agent Senyak has informed me that he personally served a copy of the summons on Richard Juterback, Assistant Resident Counsel of respondent.

5. On June 17, 1977 I gave notice of the service of the summons upon respondent to Roger L. Keech and Sandra J. Keech by sending a copy of the aforementioned notice together with a copy of the summons by certified or registered mail to the noticees at 529 Cherry Hill Lane, Kinnelon, New Jersey.

6. By letter dated June 28, 1977, Sandra J. Keech and Roger L. Keech, by their attorney Stephen E. Lampf, instructed respondent not to comply with the summons. Respondent's failure to comply with the summons continues to the date of this affidavit.

7. It is necessary to examine the books, records and other papers demanded by the summons and to take the

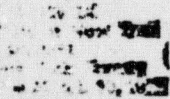
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testimony of the respondent in order to ascertain the correctness of the 1973, 1974 and 1975 tax returns filed by Sandra J. Keech and Roger L. Keech.

151
AFFIANT

SUBSCRIBED AND SWORN to before me this

22 day of Sept, 1977.



in the matter of the tax liability of
ROGER KEECH
529 Cherry Hill Lane
Kinnelon, New Jersey

Internal Revenue District of New Jersey

Periods 1972 thru 1975

The Commissioner of Internal Revenue

To MORGAN GUARANTY TRUST COMPANY

At 23 Wall Street, New York, New York

You are hereby summoned and required to appear before Special Agent A. Dombroski an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

Signature card, ledger sheets, or transcripts of accounts for any and all savings, or checking accounts and Certificates of Deposits in the names of **ROGER L. and/or SANDRA J. KEECH** covering the period 1972 through 1975. Also, any records, to include application and record of repayments relating to loans, mortgages and letters of credit.

Business address and telephone number of Internal Revenue Service officer named above:

Intelligence Division, 200 Sheffield Street, Mountainside, NJ 201-654-4345

Place and time for appearance:

at Room #204, 200 Sheffield Street, Mountainside, New Jersey

on the 5th day of July, 19 77 at 10:00 o'clock A. M.

Issued under authority of the Internal Revenue Code

this 17th day of June, 19 77

Richard A. Dombroski
Signature of Issuing Officer

Special Agent
Title

[Signature]
Signature of Approving Officer
(if applicable)

Group Manager
Title

Original to be retained by IRS

EXHIBIT B

Form 2039 (Rev. 3-77)

Form 2012 (Rev. 1-77) of Summons and Notice

I certify that I served the summons shown on the front of this form on:

Date

6/17/77

Time

9:10

How

☒ I handed an attested copy of the summons to the person to whom it was directed.

Summons

Robert E. Juterbock

Was

Asst Resident Council

Served

☐ I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any).

212-483-3171

Signature

Robert M. Lynch

Title

Special Agent

This certificate is made to show compliance with section 7603, Internal Revenue Code. This certificate applies only to summonses served on third-party recordkeepers and not to summonses served on other third parties or any officer or employee of the person to whose liability the summons relates nor to sum-

monses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Form 2039-C) to the person named below on the date and in the manner indicated.

Date of Giving Notice:

June 17, 1977

Time

By Certified Mail

Name of Noticee:

Ray L. Kagan and Mrs. Dr. J. Kagan

Address of Noticee (if mailed):

528 Cherry Hill Lane, Houston, TX 77057

How

☒ I gave notice by certified or registered mail to the last known address of the noticee.

☐ I gave notice by handing it to the noticee.

Notice

Was Given

☐ In the absence of a last known address of the noticee, I left the notice with the person shown on:

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any):

☐ If no notice is required.

Signature

Special Agent

LAMPF, PLEVA, LIPKIND & PRUPIS
COUNSELLORS AT LAW

80 MAIN STREET
WEST ORANGE, NEW JERSEY 07052

(201) 325-2100

NEW YORK TELEPHONE
(212) 349-1021

NEWARK OFFICE
17 ACADEMY STREET
NEWARK, NEW JERSEY 07102

VILLIAM D. LIPKIND
DAVID J. PLEVA
STEPHEN E. LAMPF
EIL L. PRUPIS
PAUL M. PETIGROW
REDRIC J. FELDMAN
JOHN M. CLYNE, JR.
MEMBER N.Y. AND N.J. BAR

OF COUNSEL
DANIEL R. FRUTKIN
BARRY ROSS WEINER
(N.Y. BAR ONLY)
688 FIFTH AVENUE
NEW YORK, NEW YORK 10019

PLEASE REPLY TO WEST ORANGE

FILE #

June 28, 1977

Mr. Richard Juterback
The Morgan Guaranty Co.
23 Wall Street
New York, New York

Dear Mr. Juterback:

I am writing this letter on behalf of my client's Roger and Sandra Keech, of 529 Cherry Hill Lane, Kennelon, New Jersey, pursuant to a valid and existing Power of Attorney presently on file with the Internal Revenue Service. On June 17, 1977, Agent Alexander Dombrowski served a Summons, answerable on July 5, 1977, requesting signature cards, ledger sheets or transcripts of accounts for any and all savings or checking accounts, and certificates of deposits in the name of Rober L. and Sandra J. Keech.

In accordance with Section 7609 of the Internal Revenue Code, you are herewith directed not to comply in any manner whatsoever with this Summons, and you are further directed not to discuss any matters pertaining to Roger and Sandra Keech with any officer of the Internal Revenue Office.

Sincerely yours,

STEPHEN E. LAMPF

SEL:mdp:

CERTIFIED MAIL

cc: Special Agent
Alexander Dombrowski

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,

:

Petitioner,

:

-v-

:

MORGAN GUARANTY TRUST COMPANY,

:

Respondent,

:

AFFIDAVIT ON BEHALF
OF INTERVENORS IN
OPPOSITION TO PETITION
TO ENFORCE INTERNAL
REVENUE SERVICE
SUMMONS

-and-

:

M - 18 - 304

ROGER L. KEECH and SANDRA J. KEECH,

:

Intervenors.

:

----- x

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

SANDOR FRANKEL, being duly sworn, deposes and says:

1. I am a member of the firm of Bender & Frankel, counsel for intervenors* Roger L. and Sandra J. Keech (hereinafter "the taxpayers"), and respectfully submit this affidavit in opposition to the Government's petition for an order enforcing the Internal Revenue Service's summons dated June 17, 1977 which has been served upon the Morgan Guaranty Trust Company. Said summons, a copy of which is annexed as Exhibit B to the Government's moving papers on its petition, seeks testimony and production by the bank of various books, records, papers, and other data relating to the taxpayers.

* The taxpayers have a statutory right of intervention pursuant to 26 U.S.C. 7609 (a provision of the Tax Reform Act of 1976).

2. The legal ground upon which the taxpayers oppose enforcement of the summons is taxpayers' contention that said summons was not issued by the Internal Revenue Service in good faith, in that said summons was issued solely in aid of a criminal investigation of the taxpayers. For the reasons and under the authorities set forth in taxpayers' accompanying memorandum of law, a summons issued solely for purposes of criminal investigation is improper, unauthorized, and unenforceable.

3. The factual bases for taxpayers' contention that the summons was issued solely in aid of a criminal investigation^{W45} are the following:

(a) The summons was issued by a Special Agent of the Internal Revenue Service, assigned to the Intelligence Division of the IRS, whose function is enforcement of criminal statutes relating to taxes; moreover, at least eleven other summonses have been issued during the course of this investigation, all by the same Special Agent.

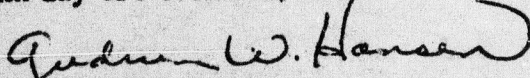
(b) As set forth in the affidavit of William G. Wooldridge annexed hereto as Exhibit 1, the Special Agent in charge of this investigation has expressly stated that he is conducting a "criminal investigation of Roger Keech."

(c) The summons in question states that the investigation of the taxpayers relates to the four-year period 1972-1975; yet with respect to two of those four years--1972 and 1974--the taxpayers have previously been audited, and those audits have been completed (see Exhibits 2A and 2B annexed hereto).

4. For the above reasons, and under the authorities set forth in intervenors' accompanying memorandum of law, it is respectfully submitted that the Government's petition should be dismissed. As the Government in its moving papers does not deny that the summons was issued solely in aid of a criminal investigation, that fact stands undisputed at this stage. In the event that the Government, in response to the taxpayers' contention, may deny in its responsive papers the factual ground of taxpayers' contention, it is respectfully submitted that an evidentiary hearing should be held to determine whether the summons was issued solely in aid of a criminal investigation, and that appropriate pre-hearing discovery, as described in the accompanying memorandum of law, should be ordered.

WHEREFORE, and pursuant to the authorities set forth in taxpayers' accompanying memorandum of law, it is respectfully submitted that the petition should be dismissed. Alternatively, it is respectfully submitted that an evidentiary hearing should be held to determine whether the summons which the Government seeks to enforce was issued solely in aid of a criminal investigation, and that appropriate pre-hearing discovery, as described in the accompanying memorandum of law, should be ordered.

Sworn to before me this
4th day of November, 1977.



GUDRUN W. HANSEN
Notary Public, State of New York
No. 42 370105
Qualified in Richmond County
Commission Expires March 30, 1979



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	
v.	)	AFFIDAVIT
	)	M-18-304
MORGAN GUARANTY TRUST	)	
COMPANY,	)	
	)	
Respondent.	)	

State of Missouri)
) ss.
County of St. Louis)

AFFIDAVIT OF WILLIAM G. WOOLDRIDGE

William G. Wooldridge, being duly sworn, deposes and
says:

1. I am employed as a tax accountant in the Tax Department of Chromalloy American Corp. (hereinafter "Chromalloy").

2. On August 15, 1977, I was present at the premises at Arrow Group Industries, Inc. (hereinafter "Arrow"), a subsidiary of Chromalloy, in Pompton Plains, New Jersey, for the purpose of participating in an audit of Arrow by the Internal Revenue Service. This audit was being conducted by revenue agents of the Internal Revenue Service. While there, I participated in a meeting with, among others, Special Agent Dombrowsky of the Internal Revenue Service. I had previously been informed that Mr. Dombrowsky was investigating Roger Keech, Arrow's president. The Keech investigation, at least for a period of time, was occurring during the same period as the revenue agents' audit of Arrow.

I had previously been informed that prior to August 15, 1977, Mr. Dombrowsky had requested, in connection with his investigation of Roger Keech, production by Arrow of certain of Arrow's records, some of which employees of Arrow had been unable to locate. On August 15, 1977, Mr. Dombrowsky was given Arrow records which I understood he had previously requested but which had not previously been located. As Mr. Dombrowsky was about to leave the Arrow premises, after having received those records, he was asked by an employee of Arrow whether the production of those records cleared up everything as between Mr. Dombrowsky and Arrow. Mr. Dombrowsky responded in the affirmative and further stated, in substance, that his only remaining interest was in his criminal investigation of Roger Keech.

William G. Wooldridge
William G. Wooldridge

Subscribed and sworn to before me this 2nd day of November, 1977.

Therese E. Stratford (Jr)
Notary Public

My commission expires NOTARY PUBLIC STATE OF MISSOURI
MY COMMISSION EXPIRES JAN. 25 1980.

**A****23a**

DIRECTOR, DISTRICT

Internal Revenue Service

Date:

NOV 11 1974

In reply refer to:

Roger L. + Sandra J. Kesch
529 Cherry Hill Lane
Kinnelon, N.J. 07405

Dear Taxpayer:

You will be pleased to know your claim for refund described below has been allowed in full.

As soon as possible, we will send you a check for the total over-assessment, provided you owe no other taxes it should be credited against. Your check will include any interest you are entitled to, computed at 6 percent a year.

Thank you for your cooperation.

Sincerely yours,
District Director

TAX RETURN	KIND OF TAX	TAX PERIOD ENDED	AMOUNT OF OVERASSESSMENT
1040X	Income	1972-12	\$ 3379.35
TOTAL OVERASSESSMENT			\$ 3379.35

Form L-267 (6-70) Part 1

Ex. 2A

A

24 a

District Director

Internal Revenue Service

Date:

APR 02 1976

In reply refer to.

• *Roger & Sandra Keec Co*
40 Arnold Asman, C.P.A.
48 Cutter Mill Road Suite 344
Great Neck, NY 11021

Return Form Number: 1040
Tax Periods Ended: 1974

Dear Taxpayer:

You will be pleased to know that our examination of your tax returns for the above periods shows no change is required in the tax reported. Your returns are accepted as filed.

Thank you for your cooperation.

Sincerely yours,

P. H. Lindman
District Director

Form L-2 (Rev. 6-70)

Ex. 2B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Petitioner, :

- v - :

SUPPLEMENTAL AFFIDAVIT

MORGAN GUARANTY TRUST COMPANY, :

M-18-304

Respondent. :

----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ALEXANDER DOMBROSKI, being duly sworn, deposes and
says:

1. I am a Special Agent, Intelligence Division, in the Office of the District Director of the Internal Revenue Service, New Jersey District, with a post of duty at 200 Sheffield Street, Mountainside, New Jersey. I submit this supplemental affidavit in support of the Government's pending petition for enforcement of the IRS summons in the captioned proceeding. The facts concerning the issuance and service of the summons and respondent's refusal to respond to it are stated in my affidavit, sworn to September 22, 1977 and will not be repeated here.

2. I was assigned to the investigation of the [1973, 1974 and 1975] tax returns of Sandra J. Keech and Roger L. Keech in [February 1977]. At that time, as well as now, the investigation was being conducted jointly by the Intelligence and Audit Divisions of the IRS New Jersey District Director's Office. Internal Revenue Agent Charles Lazarus is assigned to the case from the Audit Division.

3. As IRS Special Agent, it is my responsibility to make recommendations as to whether the facts disclosed by an investigation warrant criminal prosecution. I have not made any determination to recommend criminal prosecution for any violation of the revenue laws as to Sandra J. Keech or Roger L. Keech. The joint investigation of the Keeches is in fact ongoing and has not to date disclosed sufficient information to warrant a decision on whether or not to recommend prosecution. I cannot now know whether the facts ultimately disclosed will warrant a prosecution recommendation. I do know that if I determine not to recommend criminal prosecution the Audit Division will then decide whether there exists any additional tax liability for the years in question and whether to seek penalties against the taxpayers for civil fraud.

4. The affidavit of William G. Wooldridge, filed in support of the taxpayers' opposition to the petition for enforcement of the summons, states that on August 15, 1977, I informed an unidentified employee of Arrow Group Industries, Inc. that my "only remaining interest" pertaining to Arrow was my "criminal" investigation of Roger Keech. In the first place, to the best of my recollection, I did not have any conversation at Arrow to which Wooldridge was a party. I did, at the close of my interview with Arrow officials, speak to one Theodore Beindorf. Mr. Beindorf asked me whether the records which I had reviewed that day were the last of the material which I wished Arrow to produce

pursuant to a summons issued to Arrow. I said that, with respect to the Arrows' summons, I regarded the matter as completed, but that my investigation of Mr. Keech was ongoing. [I did not use the word criminal] when referring to my investigation of Mr. Keech although in point of fact [the joint investigation is criminal as well as civil in nature.]

5. The affidavit of Sandor Frankel, also filed in support of the taxpayer's opposition to the petition, states that with respect to the tax year 1974, the taxpayers had previously been audited and that the audit had been completed. As is indicated by Exhibit 2B to the Frankel Affidavit, the taxpayers' returns for 1974 were accepted as filed. However, by letter dated April, 1977, IRS advised the taxpayers the disclosure of information which could affect their tax liability for 1974 made it necessary to re-examine their books (See Exhibit A Annexed hereto). The April 1, 1977 letter was ^{DELIVERED ROGER KEECH} ~~sent to the taxpayers~~ in accordance with the provisions of Section 7605(b) of the Code. In light of our later letter reopening our examination of 1974, I fail to understand the significance of Mr. Frankel's representation concerning any previous audit.

Alexander Dombruski
ALEXANDER DOMBRUSKI

Sworn to before me this
16th day of November, 1977

Notary Public

NOTARY PUBLIC
STATE OF NEW YORK
JAMES J. DOMBRUSKI
NOTARY PUBLIC
JANUARY 1, 1978

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Internal Revenue Service

Department of the Treasury

District
Director

► Roger L. and Sandra J. Keech
529 Cherry Lane
Kinnelon, New Jersey 07405

Person to Contact: A. Dombroski

Telephone Number: (201) 654-4845

Refer Reply to: I-3

Date: April 1, 1977

Kind of Tax: Income

Tax Year Ended: December 31, 1974

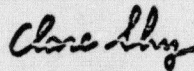
Dear Mr. and Mrs. Keech:

We are required by law to notify a taxpayer in writing if we need to reexamine his books and records after previously examining them.

Because information that may affect your tax liability has been developed since we last examined your books and records, please make them available to us for reexamination.

Thank you for your cooperation.

Sincerely yours,



District Director

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,	:	
Petitioner,	:	
- v -	:	<u>AFFIDAVIT</u>
MORGAN GUARANTY TRUST COMPANY,	:	M-18-304
Respondent.	:	

----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

CHARLES LAZARUS, being duly sworn, deposes and
says:

1. I am an Internal Revenue Agent, Audit Division, in the Office of The District Director of Internal Revenue Service, New Jersey District with a post of duty at Newark, New Jersey. I submit this affidavit in support of the Government's petition to enforce an Internal Revenue Service summons issued to Morgan Guaranty Trust Company to inspect the records stated in the summons. The circumstances surrounding the issuance of the summons and respondent's failure to comply therewith are more fully set forth in the affidavits of Special Agent Alexander Dombroski, sworn to September 22, 1977 and previously filed in support of the petition.

2. In my capacity as an Internal Revenue Agent, I am assigned to a joint investigation being conducted by the Audit and Intelligence Divisions of the New Jersey District

to ascertain the correctness of the tax returns filed by Sandra J. Keech and Roger L. Keech for the 1973, 1974 and 1975 tax years. I was assigned to this ongoing joint investigation in [1976]. My duties are to assist the Intelligence Division's Special Agent assigned to the investigation, Alexander Dombroski, in the investigation and computation of any additional tax liability.

3. I am familiar with the file compiled by the Audit and Intelligence Divisions in the course of the investigation and can state that the file contains a) no determination of whether there exists unreported income attributable to the taxpayer for the years in question; b) no determination to recommend criminal prosecution of either Sandra J. Keech or Roger L. Keech and c) no determination of whether grounds exist to institute a civil action seeking to recover additional taxes and/or fraud penalties under the Internal Revenue Code. The bank records sought by the IRS summons issued to respondent may be necessary to determine all these issues. [The records and information sought are not currently in the possession of the IRS.]

4. Mr. Dombroski, as the Special Agent assigned to the joint investigation, has sole responsibility for the determination of whether to recommend criminal prosecution. Mr. Dombroski has informed me that he has not as yet made any decision on this issue.

5. Given the present status of the joint investigation, there are two potential future dispositions. First, Special Agent Dombroski could decide to recommend prosecution, in which event my function would be to submit a Revenue AGENTS' CL Officer's Report stating the Audit Division's computation of any taxes due. This Report would end my involvement in the matter at least until disposition of the criminal aspect of the investigation. Second, Special Agent Dombroski could determine that the facts disclosed by the joint investigation did not warrant the recommendation of a criminal prosecution, in which event he would issue a Discontinued Investigation Report. After the issuance of such a report, the matter would be returned to the Audit Division and to me for a determination of whether ^{TO RECOMMEND AN ASSESSMENT FOR} ~~to assess~~ additional taxes and/or seek civil fraud penalties. To reiterate, Special Agent Dombroski has informed me that the joint investigation has not developed sufficiently to warrant a decision by him on either of the options discussed in this paragraph.

Charles Lazarus
CHARLES LAZARUS

Sworn to before me this
16 day of November, 1977.

15
NOTARY PUBLIC

(9900) RESPONSIBILITIES OF PARTICIPANTS IN JOINT INVESTIGATION—(Cont.)

It is impractical to attempt to separate such features by arbitrary rules applicable to every case. The following guidelines, which are intended to be flexible, define the features of joint investigations:

(a) *Intelligence features* are those activities of developing and preparing admissible evidence required to prove criminal violations and the ad valorem penalties for civil fraud, negligence, and delinquency (except those concerning tax estimations) for all years involved in cases jointly investigated to completion. This includes obtaining testimony of witnesses and the taxpayer's admissions; conducting necessary surveillances, undercover work, searches, seizures of property used or intended for use in violating the Internal Revenue laws, and arrests; and properly documenting pertinent records and transactions.

(b) *Audit features* are those activities of examination and verification of accounts on which such liabilities are based. These include the items required for the audit features in a nonprosecution case, such as reconciliation of the taxpayer's records with his tax returns, test checking book entries, inspecting canceled checks, reconciling control accounts with subsidiary accounts, transcribing such accounts or parts of accounts necessary for disclosing bases for adjustments to tax liability, determining and substantiating tax and accounting adjustments having no significant effect on the criminal aspects of the case, and computation of the basis for tax liabilities, including such computations when the taxpayer has no books or records.

(c) *Collection features* are those activities of receiving tax returns and related documents and obtaining payment of taxes. This includes the collection of delinquent amounts through district, seizure, levy and other means, conversing and securing, or preparing delinquent returns.

(d) The special agent is charged with the responsibility for the method of procedure and conduct of joint investigations. This is because of the importance of a criminal case from the deterrent standpoint to buttress voluntary compliance, and the gravity of possible criminal punishment. The criminal aspect is predominant. To prevent confusion as to the criminal features of a case, the special agent, unless and until he withdraws from the case, or until the criminal aspects of the case are concluded, will be responsible for the following determinations:

(a) The method to be used for criminal purposes in determining the tax basis, such as the determination of income in an income tax case by the net worth or specific assets method, or by a dual determination where it has a significant effect on the criminal case (the cooperating officer's report may, in addition to the computation for criminal purposes, present an alternative method for computing the civil liability);

(b) The identification of those adjustments upon which a recommendation for criminal prosecution will rest and/or those which will constitute the basis for a recommendation for penalty additions to the tax;

(c) The preparation and location of summary (Form 3027), and

(d) The timing and priority of investigative actions in the case.

(5) Since many of the activities performed during joint investigations, particularly with Audit personnel, are mingled, joint or similar duties and responsibilities could. To prevent duplication or overlapping of effort in joint investigations, the special agent will determine the nature and extent of participation by the cooperating officer in the following activities:

(a) Assisting in the interrogation of the principal and witnesses;

(b) Accounting reconstruction of tax basis, including the determination of the starting point for a net worth computation in an income tax case, and third-party inquiries, including cases where the taxpayer has no books of account;

(c) Verification of the principal's records by comparison with records of other taxpayers;

(d) Examination and transcription of records, accounts, and other relevant documents, including public records; and

(e) Preparation of inventories of records and/or assets, such as listing the principal's records or the contents of a safe deposit box.

(6) Decisions concerning whether the cooperating officer or the special agent should perform a specific task or part of a joint investigation, or whether they should perform it together, and the extent of participation of either officer must be on the basis of teamwork, mutual cooperation, and the best interests of the Service in the light of the particular circumstances of the case. Subsection 337.1:(6) contains a discussion of the principles which should be considered in dividing work assignments between the participating officers during joint investigations.

335 Commanding Fraud Investigations

(1) When beginning a fraud investigation, the special agent's first action should be to scan the file and determine his objective. For example, is it a preliminary investigation of an information item which is limited to initial interview with an informant, check of Service files, and possible discussions with a referring internal revenue agent? Is it a preliminary case requiring intensive but selective initial inquiries for the purpose of deciding if a detailed criminal investigation is warranted? Or, is it a full-scale case on which the expenditure of extensive and detailed efforts are already authorized? All initial assignments have as their objective the development of a potential criminal case. This involves deciding the specific criminal statute or statutes alleged to have been violated, by whom, when, where, and by what means; and understanding clearly the elements of the offense. Subsection 337 relates to planning (including the preparation of a brief joint investigation plan) and conducting full-scale numbered investigations. No written work plan or check list of weaknesses is generally required for a preliminary investigation. However, the special agent should be continually alert for circumstances such as the death or sudden serious illness of the

EXCERPT FROM GOVERNMENT'S REPLY MEMORANDUM OF LAW

or "solely in aid of a criminal investigation" by a taxpayer is insufficient to raise any issue requiring an evidentiary hearing prior to enforcement of the summons. Donaldson v. United States, supra; United States v. Manufacturers & Traders Bank, supra.

Taxpayers rely upon United States v. McCarthy, 514 F.2d 368 (3rd Cir. 1975), an opinion which the Government submits is confusing in its language and its holding. If the McCarthy opinion stands for the proposition that allegations that an investigation is being conducted by a Special Agent and that the Special Agent has stated that he is conducting a "criminal" investigation are sufficient to require a hearing on the issue of whether the summons was issued in bad faith as "solely" in aid of a criminal prosecution, the Government submits the opinion should not be followed. It is clear from Donaldson v. United States, supra, that the participation of a Special Agent is not a sufficient ground to challenge a summons enforcement on the "solely in aid of a criminal prosecution" ground. It is also clear that a Special Agent is always conducting a "criminal" investigation in that he or she is analyzing whether to recommend criminal prosecution. We do not understand how a statement by the Special Agent to that effect can be construed to constitute evidence that there is no civil purpose which is being pursued simultaneously in the investigation.

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2 involved in the case, and because he has stated that his
3 investigation is criminal, there ought to be a hearing
4 on the question of whether he has issued the summons solely
5 for the purpose of aiding his criminal investigation.

6 Now, we submit that a special agent -- according
7 to his assignment and his duties, which have been delineated
8 in the manual which controls his activities -- always is
9 conducting a criminal investigation and for him to state
10 that he's doing so is not an admission of any sort and
11 is not something which ought to be deemed to raise a ques-
12 tion as to his good faith.

13 If he denied he was conducting a criminal
14 investigation, I think that that would raise a question
15 as to his good faith.

16 But he has stated here in affidavits that he
17 is conducting both a civil and criminal investigation,
18 and under the procedures set forth in Donaldson, we believe
19 that is sufficient to warrant summary enforcement of the
20 summons.

21 Now --

22 THE COURT: The investigation that is being
23 conducted with some IRS agent from the Audit -- that is
24 what you called it --

25 MR. GWATHMEY: Audit Division, yes.

1
2 Thank you, your Honor.

3 THE COURT: As I understand the law, and my
4 reading of the cases, Donaldson and those that sought
5 to interpret Donaldson, the United States versus
6 Zack; the decision of the District of Columbia Circuit,
7 United States versus The Wall Corporation; the Fifth Cir-
8 cuit in United States versus Wright Motor Company, and
9 the Seventh Circuit decision in United States versus Henry,
10 they all, I think, emphasize the issue of good faith
11 and that the IRS cannot issue a summons and demand the
12 private papers of a party when it is in fact conducting
13 a criminal investigation and it is doing this in bad faith
14 in that regard, but the critical point is bad faith.

15 The burden is on the taxpayer to establish
16 that. That is a pretty heavy burden.

17 I don't think that I have to go as far as
18 Judge Metzner did in his case, in the case he decided,
19 and to sustain the government's position, United States
20 versus Manufacturers & Traders Bank, unreported, I believe
21 -- it was his position that the -- no proceeding would
22 lie to prevent the subpoena -- to suppress the subpoena
23 in a situation of this kind until after the IRS had
24 recommended that criminal prosecution.

25 I don't think that I have to go that far. It

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2 seems to me that issue is bad faith. And Donaldson tells
3 us that because there is a joint criminal and civil
4 investigation, that is not an indicia of bad faith.

5 In this instances, as far as I can gather,
6 Mr. Dumbrowski's role was to make a determination as
7 to whether or not he would recommend a criminal prosecu-
8 tion.

9 There is no showing that he has reached a
10 decision to recommend criminal prosecution and therefore
11 is proceeding illegally to get these papers and there-
12 fore to be in violation of Fourth and Fifth Amendment
13 rights.

14 I don't believe that the taxpayer, and the
15 intervenors, have established a sufficient basis for
16 this Court to grant a hearing.

17 I don't know what posture this is, since the
18 government has -- is the one that came up with the order
19 to show cause, I don't know whether the end result is
20 that the government's petition is granted or whether, in
21 fact, the intervenor's motion to suppress the subpoena
22 is denied.

23 But, in any event, you get the sense of my
24 holding.

25 MR. BENDER: Could I just ask your Honor one

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2 thing, if I may, in connection with this?

3 You did indicate the difficult burden that
4 the taxpayer does have. How else can a taxpayer be able
5 to show that there has been a firming up of the special
6 agents mind as to where he is going unless we could have
7 the opportunity of a hearing?

8 THE COURT: That is a problem, but I think
9 that that has to be addressed to the Supreme Court of
10 the United States and to the Courts of Appeal.

11 It appears to me that in some instances,
12 certainly in the cases cited, there has been a sufficient
13 indicia that the special agent has apparently careless and
14 open, or wouldn't make any pronouncements, and the Court
15 found that the burden had been met.

16 That is the rule in terms of the burden, and
17 I think you have to establish a basis for it, and my
18 holding is that you have not.

19 MR. BENDER: Would you be good enough to
20 stay the order for 10 days so we can have an opportunity
21 to decide whether we want to appeal your Honor's order?

22 THE COURT: I would stay it if I thought there
23 was some doubt about the correctness of my ruling. I
24 don't believe that there is any, and I will not stay it.

25 Since it is Friday, I will stay its execution

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until Monday to allow you to get to the Court of Appeals.

MR. BENDER: Monday, 4:00 o'clock, your Honor?

THE COURT: Yes, Mr. Bender.

MR. GWATHMEY: I take it that we need not submit an order to you but we will regard your opinion as stated as the order.

THE COURT: You may submit an order. It probably makes more sense to submit an order. Submit an order today. I will allow Mr. Bender until Monday at noon to reach the Court of Appeals.

You may -- I suppose what you need to do, Mr. Bender, to make the record clear, you will -- you have already applied to me for a stay, and I have denied it.

o0o

COPY RECEIVED
Robert B. Fiske Jr.
UNITED STATES ATTORNEY
12/14/77 *RF*